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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/693,559	10/27/2003	James D. Perrick	7658	3618

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EXAMINER

LOFDAHL, JORDAN M

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 10/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/693,559

Applicant(s)

PERRICK, JAMES D.

Examiner

Jordan Lofdahl

Art Unit

3644

[Signature]

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 September 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) 5-7, 9 and 10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 October 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 10/27/03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

Applicant's election of 2A, 1B and 1C in the reply filed on 9/7/04 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 5-7, 9 and 10 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected subspecies, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 9/7/04.

Drawings

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "21" has been used to designate both the bait and a barbed hook. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of

any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 and 3 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "said wingcase wobbler stop means". There is insufficient antecedent basis for this limitation in the claim. Antecedent basis is given to a bait body having a "stop means" but no antecedent basis for a wingcase wobbler stop means.

Claim 1 recites the limitation "said stop base end". There is insufficient antecedent basis for this limitation in the claim.

Claim 3 recites the limitation "the bait stop" and "the stop base". There is insufficient antecedent basis for these limitations in the claim.

Claim Objections

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Claim 1 is objected to because of the following informalities: The preamble recites "a wobbling fishing lure" which is read as the wingcase wobbler. Applicant should remove the "a wingcase wobbler" recitation from the claim or add it to the preamble.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Eaby (2214409).

As to claim 1, Eaby discloses a flat material (10) capable of flexing and has a round bow end (10a); a stern end (10b); a port (14) formed along the longitudinal axis that is spaced a greater distance from the stern than from the bow ends of said wobbler, and said stern is arranged for coupling to a bait; a bait that includes a body having a barbed hook (151a) on a rear end and an eyelet (151b) and includes a stop means (151a; fig. 8) and a wobbler stop means (13).

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As to claim 3, disclosed is a right angle section (151a, fig. 8) extending oppositely the hook (151a) and includes a leg that extends at approximately a right angle from the stop base toward the eyelet and is fit into a slot (13) formed in the stem.

As to claim 4, disclose is the device inherently having a color.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Eaby (2214409).

As to claim 2, disclosed is the distance of the port from the stern end is approximately 175% greater than the distance from said port to the bow end (fig. 1). Not disclosed is a plastic material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to comprise the device of plastic; since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Eaby (2214409) and further in view of Brown (2603025).

As to claim 8, disclosed is a hook having a center body, an eyelet and a barbed hook with a stop secured to said body below and pointing oppositely to said hook (fig. 8). Not disclosed is the body wrapped with thread. Brown, however, discloses a body wrapped with thread (8). It would have been obvious to one having ordinary skill in the art at the time the invention was made to comprise the device of Eaby with the thread of Brown to create another means to attract fish.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jordan Lofdahl whose telephone number is 703.605.1217. The examiner can normally be reached on m-f 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 703.305.7421. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jml



TERI P. LUU
SUPERVISORY PRIMARY EXAMINER